IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1771 OF 2004

Maharashtra Suraksha Rakshak Aghadi .. Petitioner

v/s.

1. The Security Guards Board for Greater Mumbai and Thane.

2. M/s.Crest Communication Limited

3. Hindustan Security Force.

4. State of Maharashtra .. .. Respondents

Mr.Sushil Mahadeshwar for petitioner.

Mrs.Lata Desai for respondent No.1.

Mr.Sudhir Talsania, Senior Advocate with Mr.N.R.Engineer for respondent No.2.

Mr.W.S. Rane with Mr.S.B. Sharma for respondent No.3.

Mr.P.M. Mokashi, AGP for respondent No.4.

CORAM : H.L. GOKHALE &
J.H. BHATIA, JJ.

DATE OF RESERVING THE JUDGMENT : 7th July 2006

DATE OF PRONOUNCING THE JUDGMENT: 10th October 2006

JUDGMENT : (Per H.L. Gokhale, J.)

1. This Writ Petition, as it was originally filed, sought an action against respondent No.2 under Clause 42 of the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Scheme, 2002 (hereinafter referred to as the "Scheme"). This Clause 42 provides for

penalty for contravention of the provisions of Clauses 13, 24(7), 25, 26, 27 or 28 of the Scheme. Clause 13 requires every principal employer engaging security guards to register itself with the Board. Clause 25(2) of the Scheme obliges the principal employer not to employ the security guard other than the one who is allotted to him by the Board.

2. Prayer (b) of this Petition sought a direction to the 1st respondent-Board to register the security guards, whose names are listed in Exhibit-A to the Petition, and to allot them to respondent to No.2 - principal employer.

3. Subsequently the Petition was amended to challenge the Notification dated 7th April 2004 which was the first notification granting exemption to the security guards engaged by respondent No.3 - security agency wherein the name of the 2nd respondent - principal employer is mentioned at Sr.No.20 and the names of these 13 security guards are mentioned against his name. The Petition sought to challenge the subsequent Corrigendum dated 29th July 2004 also whereunder some more names were added as far as respondent No.3 - contracting agency is concerned, but the

names of 13 security guards allotted to respondent No.2 were continued and there was no addition therein.

4. The main grievance in the Petition as against the Board is that it is not taking the action against the principal employer. It is stated amongst others in paragraph 6(r) of the Petition that overtime wages are not paid at double the rate and in paragraph 6(s) thereof, it is stated that ex-gratia is less and the uniform is not being changed as frequently as under the Board.

5. Respondent No.2 - principal employer has filed an exhaustive reply. At page 50 of this reply the bill given by the Hindustan Security Force for payments to these security guards is annexed. It is seen therefrom that this contracting agency has billed them per employee at the rate of Rs.4840/- per month. It is material to note that in the Petition there is an averment in paragraph 6(r) that at a time when the guards under the Board were paid Rs.3200/- per month, the present guards were being paid an amount of Rs.3005/- per month. It is seen from the said reply that as far as the principal employer is

concerned, he was passing on a larger amount to the security agency per employee, though it is stated that the principal employer was not aware as to what amounts were being paid to the guards by respondent No.3 - agency.

6. It is, however, further material to note that it is stated in this reply that earlier respondent No.2 was functioning at Hind Cycle Road, Worli. In paragraph 3(d), it is stated that respondent No.2 has now shifted to new office at Lal Bahadur Shastri Marg, Ghatkopar (West) on a leave and licence basis. Respondent No.2 no longer requires 13 guards and that it requires only two guards. It has, therefore, now engaged the services of M/s.Security and Personal Services Pvt. Ltd. for that purpose. This is all stated in the Affidavit affirmed on 7th of March 2006.

7. In the new premises where respondent No.2 has shifted, it has entered into an agreement with an agency which is considered as amenities provider and this amenities provider provides security of the common areas under Clause 28(a) of the Agreement. Therefore, respondent No.2 no longer requires more security guards. Respondent No.2 requires two of them at its own premises, which,

as stated earlier, it has engaged M/s.Security and Personal Services Pvt.Ltd., which has deployed two security guards. It is, therefore, stated that there is no occasion for any relief against respondent No.2.

8. It is material to note that there is no counter to this reply filed by respondent No.2. That being so, we may have to presume that the 13 security guards concerned must have been compensated in accordance with law by the agency, which employed them or must have engaged them else where. In any case, the petitioner-Union has raised no grievance after receiving the reply. Similarly as far as the two security guards now engaged are concerned, if they have any grievance it will be for them to represent to the board and to take appropriate action.

9. As far as the relief by the petitioner - Trade Union against respondent No.2 for these 13 security guards, whose names are listed in Exhibit-A to the Petition, is concerned, the same can no longer survive. Petition, therefore, stands dismissed.

10. In the circumstances, the Petition is

dismissed. There shall be no order as to costs.

(H.L. GOKHALE, J.)

(J.H. BHATIA, J.)